No. 10,425

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5, on behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and ALASKA PACKERS ASSOCIATION (a corporation); ALASKA SALMON COMPANY (a corporation), and RED SALMON CANNING COMPANY (a corporation),

Appellees.

BRIEF FOR APPELLANTS.

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Appellees.

BRIEF FOR APPELLANTS.

STATEMENT.

This is an appeal from a judgment and decision of the District Court of the United States in and for the Territory of Alaska, at Juneau, affirming on review a decision of the Unemployment Compensation Commission of Alaska (hereafter designated Commission) denying unemployment benefits to Appellants.

PLEADINGS AND JURISDICTION.

This case was commenced when Appellants claimed benefits under the Alaska Unemployment Compensation Law (Alaska Stats., Ch. 4, Extraordinary Session Laws of 1937, as amended by Ch. 1 and 51, S. L. 1939—hereafter designated Act) for the 1940 Alaska salmon season during which period they were unemployed.

From an original determination by the Commission denying benefits to Appellants (members of the Alaska Cannery Workers Union—hereafter designated Union), they took an appeal.

Pursuant to the Act, the Commission appointed a Referee, Henry Roden, to take evidence. The Referee found in favor of Appellants and ordered benefits paid. (R. p. 608.)

Appellees (the Commission and Appellants' employers—Alaska Packers Association, Alaska Salmon Company, and Red Salmon Canning Company) took an appeal to the Commission which reversed the Referee and denied benefits. (R. p. 644.)

Appellants filed a petition in the District Court to review the decision of the Commission. (R. p. 650.)

The District Court had jurisdiction under Section 6(i) of the Act. (R. p. 651.)

The District Court affirmed the Commission's decision and held against Appellants. (R. p. 692.)

This appeal followed. (R. p. 746.)

This Court has jurisdiction by virtue of the provisions of Section 128 of the Judicial Code, 28 U. S. C. A. 225.

STATEMENT OF FACTS.

The question presented on this appeal, as in the various hearings below, is this: *Were Appellants unemployed during the 1940 Alaska salmon season because of a labor dispute in active progress at the establishment at which they were last employed within the meaning of Section 5(d) of the Act?* If they were, then the decision of the District Court must be affirmed. If they were not, the District Court must be reversed.

We invite particular attention to the decision of Referee Roden who, as trier of the facts, had the opportunity to hear the witnesses at first hand and whose findings should therefore be entitled to great weight. He made rather a complete statement of the facts. (R. pp. 608-612.)

All of the Appellants were employed as cannery workers by either Alaska Packers, Alaska Salmon, or Red Salmon in Alaska during the 1939 salmon season. *When the 1939 season ended, the employment of each worker was finished, and he was separated from his employer's payroll as a result of the season's being at an end. Thereupon, the employer-employee relationship between them terminated and was never resumed.*

Appellants worked during 1939 under a contract between their Union and the Employers. That contract by its terms was to be renewed from year to year unless either party terminated it. In the fall of 1939 the Employers terminated the contract. (R. p. 267.)

Negotiations between the Union and the Employers commenced in March of 1939 and continued during

that month and April, 1939. The Union submitted a contract which called for wage increases and other improvements over the 1939 contract. (R. p. 275.) The Employers rejected this. The Employers offered the Union a contract which proposed wage reductions and other poorer conditions than were provided by the 1939 contract. The Union rejected the Employers' proposal. The Union finally offered to re-execute the 1939 San Francisco contract. The Employers refused. The Employers never at any time offered to re-execute the 1939 San Francisco contract.

On April 3, 1940, the Employers notified the Union that if an agreement were not reached by April 10, 1940, the Karluk expedition would be called off; and if no contract were reached by April 12, 1940, the Chignik operation would be called off. (R. p. 325.) Those "deadline" dates came and passed without a contract, and the operations were called off, and the matter was at an end between the parties so far as these operations for 1940 were concerned. The parties never met again concerning them nor did they discuss these operations after the "deadline" dates fixed by the Employers.

On April 26, 1940, the Employers notified the Union that unless an agreement were reached for the Bristol Bay operations by May 3, 1940, that operation would be called off. (R. p. 378.) *In the same letter, the Employers notified the Union that Alaska Salmon would not undertake any Bristol Bay operation during 1940.*

The May 3, 1940, deadline came and went without a contract for Bristol Bay, and the Employers called off

that operation. After that date the parties met no more and did nothing further with respect to Bristol Bay for 1940. The Bristol Bay season was called off by the Employers, as had been Karluk and Chignik, and that was that.

It should be noted that the Commission by Benefit Regulation No. 10 (R. p. 199) had fixed the

Karluk season: April 5th-September 5th;
Chignik season: April 1st-September 10th;
Bristol Bay season: May 5th-August 5th.

Negotiations terminated on, and neither party did anything further with respect to 1940 operations at the respective areas after the following dates:

Karluk: April 10, 1940;
Chignik: April 12, 1940;
Bristol Bay: May 3, 1940.

At the Referee's hearing it was testified, and it is not denied, that the Union and the Appellants never called a strike against, nor were they on strike against the Employers during 1940. Obviously, the Appellants never went to Alaska. The operations were never started during 1940, and there was no operation to be interrupted by either strike or picket line.

The Appellants testified that they were willing and able to work at any time during 1940 in Alaska on the same basis that they worked in 1939. (R. pp. 84-85.) However, no work was made available by the Employers to the Appellants on the basis of the 1939 San Francisco agreement. In fact, no work was made available to Appellants by the Employers for 1940.

Referee Roden found that a "labor dispute" existed, but that *it was not in active progress* at Karluk after April 10, 1940, nor at Chignik after April 12, 1940, nor at Bristol Bay after May 3, 1940, and that *accordingly claims filed for unemployment after those dates should be allowed.*

The Commission and the District Court found that there was both a "labor dispute" and that it was "in active progress" during the entire 1940 season, and accordingly denied Appellants benefits for the whole season.

Appellants assert that there was not a "labor dispute" within the meaning of the Act and therefore they were not at any time disqualified for benefits, but that if there were a "labor dispute" it was not in "active progress" after the dates and for the reasons stated in Referee Roden's decision.

SPECIFICATION OF ERRORS RELIED UPON.

Appellants rely upon all of the errors specified which appear at R. pp. 722-745. These are as follows:

I.

Finding of Fact No. 5 made by the District Court is not supported by the evidence adduced before the Referee and the Commission in that no labor dispute, within the meaning of the Act, existed between Appellants and Employers. The alleged labor dispute did not continue and did not remain in active progress as stated by said finding. (See R. pp. 711-718 for Findings of Fact and Conclusions of Law.)

II.

Finding of Fact No. 6 made by the District Court is irrelevant and immaterial in that it makes no difference whatsoever to this proceeding when Appellee companies find it necessary to make preparation for the Alaska salmon packing season, but the only issue in this case is whether Appellants are entitled to benefits under the Act in view of the evidence adduced before the Referee and the Commission.

III.

Finding of Fact No. 7 made by the District Court is not supported by the evidence in that said finding assumes that a labor dispute existed and continued whereas the fact is that no labor dispute existed or continued or was in active progress during the 1940 Alaska salmon packing season within the meaning of the Act. Appellants take no exception to said finding insofar as it sets forth the dates given by Employers as their deadlines for the execution of collective bargaining agreements. Insofar as Finding No. 7 finds that canning operations could not be undertaken unless agreements were reached before the dates set forth, said finding is improper in that said matter is immaterial and irrelevant to the rights of Appellants to have unemployment benefits.

IV.

With respect to Finding of Fact No. 8 made by the said District Court the only part of said finding that is proper is as follows: "That no agreement was reached." The balance of said finding is immaterial

and irrelevant and is not a proper finding and has no relation whatsoever to the issue involved in this case, namely, the right of Appellants to be awarded unemployment benefits for the 1940 season.

V.

Finding of Fact No. 9 made by the District Court is not supported by the evidence in the following respects:

(1) No labor dispute existed within the meaning of the Alaska Unemployment Compensation Law.

(2) Admitting for the sake of argument that a labor dispute existed at one time, it did not exist and was not in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season as defined by the Commission, but said labor dispute was in active progress at Chignik only from April 1, 1940, to April 12, 1940, and terminated on April 12, 1940, and was not in active progress at Chignik during the balance of the 1940 season; that said labor dispute was in active progress at Karluk only from April 5, 1940, to April 10, 1940, and terminated on April 10, 1942, and was not in active progress at Karluk during the balance of the 1940 season; that at the commencement of the season at Bristol Bay no labor dispute was in active progress, and no labor dispute existed with respect to the Bristol Bay operations at any time during the 1940 season.

VI.

Finding of Fact No. 10 made by the District Court is not supported by the evidence adduced before the

Referee and the Commission in that the unemployment of Appellants during the 1940 season was not due to a labor dispute existing between Appellants on the one hand and Appellee companies on the other; and admitting for the sake of argument that a labor dispute existed at one time, said labor dispute was not in active progress during the said 1940 season in the plants where Appellants were respectively last employed, but said labor dispute, if any, terminated at Chignik on April 12, 1940, and terminated at Karluk on April 10, 1940, and was not in existence at all at Bristol Bay during the 1940 Bristol Bay season.

VII.

Finding of Fact No. 11 made by the District Court is not supported by the evidence adduced before the Referee and the Commission, but on the contrary the conclusions of law and the decision of the Alaska Unemployment Compensation Commission were not supported by the evidence, and the said findings of the Commission were not sufficient, but on the contrary the Commission should have made findings of fact on matters which the Commission ignored, and which were necessary to a proper determination of the case, as follows:

1. What facts are necessary to show a "labor dispute" within the meaning of the Act? Must there be a strike, walk-out, presently existing employer-employee relationship terminated by dispute, picket line, a job to strike? What bearing does the absence of these factors have in the instant case?

2. Is Appellants' unemployment "due" to a labor dispute, or is it "due" to the curtailment in Alaska Packers' Bristol Bay operations, and the failure of Alaska Salmon to operate for reasons unconnected with labor, and finally is not the unemployment of Appellants "due" to the seasonal nature of their work and the fact that they were never re-employed in 1940, rather than an alleged labor dispute?

3. If there was a dispute, how long did it remain in "active" progress? Did not the dispute terminate when the Employers abandoned their operations, for Karluk on April 10, 1940; Chignik on April 12, 1940; and Bristol Bay on May 3, 1940? Was not the Referee correct in so finding, and was not the Commission in error in not considering this fundamental finding, and indicating where it was wrong, if it was wrong?

4. In what way do negotiations which do not result in a contract constitute a labor dispute within the meaning of the Act?

VIII.

Finding of Fact No. 12 made by the District Court is not supported by the evidence and the evidence shows, contrary to said finding, that the Alaska Salmon Company would not have conducted its 1940 salmon packing operations regardless of whether a collective bargaining agreement had been entered into with the Union and its members or not.

IX.

Finding of Fact No. 13 made by the District Court is not supported by the evidence. Appellants did make

objections to the findings of the Commission according to the provisions of the Alaska Unemployment Compensation Law by appealing the decision of said Commission to the above entitled Court and filing in this Court their petition for review of said decision on January 8, 1941. That what this finding probably intended to state was that Appellants made no objections to and took no appeal from the findings of the Referee who heard the matter originally, and while it is true that Appellants did not appeal from the decision and findings of the Referee, that when Appellee companies took an appeal to the Commission, the entire matter before the Referee was reopened before the Commission, and everything which Appellants presented to the Commission on the Appellees' appeal was therefore proper and according to law. The findings of the Commission are not conclusive upon Appellants because said findings are contrary to and not supported by the evidence and such a decision is appealable and the evidence may be reviewed to determine if it supports the findings, as provided by Section 6(i) of the Alaska Unemployment Compensation Law.

X.

Conclusion of Law No. 1 made by the District Court is in error and contrary to law in that Appellants were not unemployed because they were unwilling to accept employment offered them or because of a labor dispute which was in active progress during the entire 1940 Alaska salmon packing season but, on the contrary, said Appellants were unemployed during the said 1940 season because Appellee companies failed and refused

to employ Appellants and failed and refused to enter into a collective bargaining agreement with the Union of which Appellants were members. Said conclusion of law is contrary to and not supported by the evidence in that the evidence shows that if a labor dispute existed, it terminated at Chignik on April 12, 1940, at Karluk on April 10, 1940 and was not in existence at all at Bristol Bay during the said 1940 season, and therefore Appellants were entitled to benefits accordingly.

XI.

Conclusion of Law No. 2 made by the District Court is not proper and is contrary to law in that the definition therein stated of what constitutes an active labor dispute within the meaning of the Alaska Unemployment Compensation Law is wrong, but that an active labor dispute within the meaning of said Act means an actual dispute between employer and employee whereby the relationship of employer and employee is terminated and employees remain away from work because of a dispute with their employer over wages, hours or other conditions or incidents to employment. That the declared purpose of the law requires that benefits be paid rather than denied in this case.

XII.

Conclusion of Law No. 3 made by the District Court is improper and contrary to law in that the findings and decision of the Alaska Unemployment Commission are improper, not supported by the evidence, contrary to the evidence and contrary to law and thereby said

findings and decision should have been set aside and reversed. That Appellants are entitled to benefits for their unemployment during the entire 1940 season and should have been paid said benefits. That specifically Appellants urge the following assignments of error in connection with the findings and decision of the Commission:

1. *Certain findings of fact made by the Commission are not supported by the evidence.*

A. The Commission found as a fact that "negotiations for (a 1940) agreement were entered into between said parties (Employers and Union) and were in *active progress at the opening of the canning season as set forth in said Regulation No. 10.*" (Our italics.)

Exception to said finding:

(1) Regulation No. 10 provides that the Bristol Bay season was to open on May 5, 1940. The evidence offered by the Employers themselves (and Appellants do not dispute it) shows that the negotiations for the Bristol Bay operations terminated at midnight May 3, 1940, and that the Employers abandoned the season at that time which they had fixed as their "deadline" to reach a 1940 agreement with the Union. (See Employers' Exhibit "X", Appellants' Exhibit "19", R. pp. 382, 230. See also decision of Special Referee Henry Roden, R. p. 611, finding that negotiations for Bristol Bay terminated at midnight May 3, 1940, and that the Employers abandoned the Bristol Bay season at that time.)

It follows without answer that the Commission's finding of fact that negotiations were in active progress at the opening of the season as fixed by Regulation No. 10 is in error and not supported by the evidence insofar as the Bristol Bay operations are concerned.

(2) In addition, the Alaska Salmon Company abandoned its entire 1940 operations on April 30, 1940, five days before the season at Bristol Bay opened. (See Appellants' Exhibit "2".) This company operates only at Bristol Bay. It follows that the Appellants employed in 1939 by Alaska Salmon Company are unquestionably entitled to benefits, and the Commission's finding is in error insofar as it finds that Alaska Salmon Company was carrying on active negotiations at the time of the opening of the Bristol Bay season as fixed by Regulation No. 10.

We conclude that there were no negotiations for Bristol Bay after May 3, 1940, and that all Appellants employed at Bristol Bay in 1939 are without question entitled to benefits for the full season and are subject to no labor dispute disqualification. This includes all the 1939 employees (members of the Union) of Alaska Salmon Company and Red Salmon Canning Company, who operate only at Bristol Bay; and those employees of Alaska Packers who were employed at Bristol Bay in 1939.

B. The Commission found as a fact that the Employers notified the Appellants "of the *necessity* of entering into a new working agreement for the canning season of 1940". (Our italics.)

Exception to said finding:

(1) Insofar as this finding means that a new agreement was to be reached between the parties for the 1940 season if there was to be an operation by the San Francisco Employers, the finding is proper and supported by the evidence. But insofar as it leaves the inference that the Employers were ready to sign an agreement but the Union was not, the finding is not supported by the evidence. The Employers wanted to sign a 1940 agreement on terms less favorable to the Union than the Union enjoyed in 1939. The onus cannot be placed on the Union for failing to arrive at an agreement. The blame, if it belong anywhere, rests with the Employers who without justification or reason wanted the Union to accept less favorable terms and conditions than the workers enjoyed in 1939, while the Union wanted at least a renewal of the 1939 agreement. The Appellants were at all times ready, willing and able to work on 1939 wages and terms. The use of the word "necessary" is therefore not supported by the evidence insofar as the inference is left that the Employers were not at fault in the failure of the parties to reach an agreement for the 1940 season.

(2) Alaska Salmon Company abandoned its 1940 operation on April 30, 1940 (Appellants' Exhibit "2"), and would not have operated during 1940 irrespective of whether there had been or had not been an agreement with the Union. (See R. p. 589, stipulation by Mr. Oliver, counsel for Alaska Salmon, to that effect.)

It follows that the operators and particularly Alaska Salmon Company did not find it "necessary" to reach an agreement for the 1940 season.

2. *The conclusions of law and decision of the Commission are not supported by the findings of fact.*

A. The Commission concluded that "there was an active labor dispute existing between the parties at the opening of the season".

This conclusion must be separated into its two parts: First, that that was a *"labor dispute"*, and second, that there was an *"active"* labor dispute at the *opening of the season.*

The Commission's "findings of fact" can be briefly summarized as follows:

1. That all Appellants were employees of the Employers during the 1939 seasonal canning industry as provided in Regulation No. 10.

2. That the Employers cancelled the 1939 agreement with the Union.

3. That the Employers notified the Union of the "necessity" of entering into a new agreement for the 1940 canning season.

4. That the Union admitted receipt of the notice of the cancellation of the 1939 agreement.

5. That thereafter, negotiations for the 1940 season occurred.

6. That the salmon cannery industry is seasonal.

7. That dates for which unemployment benefits could be allowed were provided by Regulation No. 10.

8. That Employers and Appellants were aware of this condition.

9. That the dates of operation of the canneries in the districts involved in this controversy as fixed by Regulation No. 10 are as follows:

Karluk: April 5-September 25;
Chignik: April 1-September 10;
Bristol Bay: May 5-August 25.

10. That following the notice of cancellation of the 1939 agreement by Employers, negotiations for a 1940 agreement between the parties commenced.

11. That the negotiations were in active progress at the opening of the season as set forth in Regulation No. 10.

12. That no agreement was ever entered into between the parties prior to the opening of the season, or thereafter.

13. Quoting from the Declaration of Territorial Public Policy of the Act that benefits were to be paid to persons unemployed through no fault of their own.

Exception to said conclusion:

(1) Appellants submit that these findings do not support a conclusion that a "labor dispute" existed between the parties. All that can be concluded from the Commission's findings is that the parties negotiated for, but did not arrive at a 1940 agreement. We submit, that it is not a "labor dispute" within the meaning of the Act. There are no findings to support a conclusion that a "labor dispute" existed.

(2) Appellants submit that these findings do not support the conclusion that there was an "*active* labor dispute existing between the parties at the *opening of*

the season". (Our italics.) The Commission has failed to separate the various areas of operation with regard to the opening of the season. For the sake of argument (but not admitting it) let us say a "labor dispute" occurred between the parties. The Employers abandoned the Chignik operation on April 12, 1940; the Karluk operation on April 10, 1940; and the Bristol Bay operation on May 3, 1940. After those dates, the Employers and the Union did nothing with regard to the 1940 season for the respective areas. The parties dropped the matter. The Employers called off the season. In the words of Referee Roden, the parties treated the matter as a "dead horse". (See decision of Referee Roden, R. p. 640; Employers' Exhibits "U" and "X"; Appellants' Exhibits "2" and "19".)

Bear in mind that the seasons opened as follows:

Karluk, April 5th;
Chignik, April 1st;
Bristol Bay, May 5th.

While it may be argued that the "labor dispute" was in active progress with respect to Chignik and Karluk by reference to the above dates at the opening of the season in those areas, the same thing cannot be said for Bristol Bay. There the "dispute" terminated, the negotiations ended, and the season was abandoned on May 3, 1940, two days before the season opened. We submit that there was no "active labor dispute" at Bristol Bay at the *"opening of the season"* there.

Therefore, the conclusion that "an active labor dispute existed between the parties at the opening of the season" is not supported by the findings of fact.

B. The Commission concluded that "the dispute *continued*". (Our italics.)

That conclusion is not supported by the findings. There are no *findings* that the dispute (if there was one) *continued* to any *particular day* with reference to any of the three areas in question. Nor is there any *conclusion* regarding the day to which the "dispute" continued. For all that appears from the decision, the dispute still continues and will continue to continue, and there is no indication as to when it will end if ever. As a matter of fact, the dispute, if there was one, ended with regard to Karluk on April 10, 1940; at Chignik on April 12, 1940; and at Bristol Bay on May 3, 1940; all as noted above.

C. The decision reversing the Referee, and disqualifying Appellants for eight weeks each is in error, because as indicated above there are no findings to support a conclusion that a labor dispute existed, or that if there was a dispute, that it continued beyond the dates mentioned for the respective areas; and the decision is in error in disregarding the uncontradicted evidence that the negotiations for Bristol Bay ended, and the season for that area was abandoned, on May 3, 1940, two days before the season was to open.

3. *The conclusions of law and decision of the Commission are not supported by the evidence.*

A. The conclusion that there was a "labor dispute" is not supported by the evidence.

The uncontradicted evidence shows that the Union did not declare a strike, and did not picket the Em-

ployers, and did not strike or picket because there was no operation to strike or picket; that there was no employer-employee relationship existing between the parties at the beginning of the 1940 season; that the last time the Appellants were employees of the Employers or on their payroll was at the conclusion of the 1939 season, and when that season ended, the employee-employer relationship between the parties ended.

The evidence further shows that the Employers wanted the Union to accept a reduction of the 1939 San Francisco contracts, and only offered the Union either the 1939 or 1940 *Seattle* agreement, whichever was most favorable to the Union. That the Employers never retreated from this stand. That the Union proffered a 1940 contract which was more advantageous to it than the 1939 San Francisco contract. That this was rejected by the Employers, and the Union finally offered to re-execute the 1939 San Francisco contract, which the Employers refused. That the Employers abandoned their respective operations as their stated "deadlines" occurred; Karluk, April 10, 1940; Chignik, April 12, 1940; Bristol Bay, May 3, 1940. That thereupon the matter was dropped by both parties, and nothing further was done between them with regard to the 1940 season. There were meetings between the parties for negotiation purposes. The evidence shows that the negotiations were carried on in a friendly manner. The Appellants were ready, able and willing to work in 1940 on the same wages and conditions that they enjoyed out of San Francisco in 1939. That Alaska Salmon Company would not have

operated in 1940 even if an agreement had been reached with the Union. That the Alaska Packers were going to curtail their operations and employment at Bristol Bay one-third on account of the Government ordered curtailment in fishing.

We submit that these facts do not show a "labor dispute" *within the meaning of the Act.*

B. The conclusion that there was an "active" labor dispute is not supported by the evidence.

It has been fully stated hereinabove that if there was a dispute, it was not in active progress at Karluk after April 10, 1940; nor at Chignik after April 12, 1940; nor at Bristol Bay after May 3, 1940. So Referee Roden found, and the evidence and reason support that finding and the Commission does not examine nor dispute this finding. The Commission merely lays down an unsupported conclusion and fiat that a dispute was in "active" progress.

The Act provides that a labor dispute, to disqualify an applicant, must be in active progress with respect to "any week" for which the applicant is disqualified. In other words, if there is a dispute in existence for one week, that disqualifies the applicant only for that one week, but not thereafter. Therefore, if there was a dispute, it ended at Karluk on April 10, 1940, and at Chignik on April 12, 1940, and Appellants last employed in 1939 in plants at those areas are not disqualified after those dates that the dispute was not in "active" progress.

With regard to Bristol Bay, the dispute ended on May 3, 1940, two days before the season opened.

Appellants would not be entitled to benefits until the season opened on May 5, and at that time there was no dispute in active progress. The dispute was then a thing of the past. Therefore, there is *no* disqualification with regard to the employees who were last employed in 1939 in Bristol Bay.

Furthermore, an "active" labor dispute, means a going operation which is *interrupted* by such dispute. It is admitted that there was neither strike nor picket line or going operation here, nor could there be, because the workers never started to work in 1940; there was no job to strike; no employer-employee relationship to terminate. Therefore, there was no labor dispute in "active" progress. A dispute in active progress would mean that there would be a way to end it, and therefore if the workers started it (thereby disqualifying themselves) they could end it (thereby removing the disqualification). But here, the Employers abandoned the season on their "deadline" dates, and that was all there was to the 1940 season so far as these Appellants are concerned.

C. The conclusion that the dispute "continued" is contrary to the evidence.

It has already been adequately set out herein that the dispute (if there was one) ended on the dates the Employers abandoned their respective operations, and that the dispute became a dead letter on those dates. The Commission's conclusion that the dispute "continued" could mean that the dispute continued indefinitely and in fact still continues. That conclusion,

or any conclusion that the dispute continued after the dates set out hereinabove, is contrary to the evidence.

D. The decision is in error in that there is neither finding nor conclusion that Appellants' unemployment during the 1940 salmon canning season was "due" to a labor dispute in active progress at the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.

The Commission merely found a "labor dispute" and disqualified Appellants. The Commission does not consider whether Appellants were unemployed at Alaska Packers because of the curtailment. It is admitted tht this company, if it operated during 1940, was going to hire one-third fewer workers than in 1939, at least at Bristol Bay operations.

It is admitted that Alaska Salmon Company would not have operated in 1940 even had an agreement with the Union been signed. Therefore, it would follow that the employees of Alaska Packers (at Bristol Bay) and Alaska Salmon would not be disqualified in any event because their unemployment would not be "due" to a labor dispute. Insofar as it would be difficult to determine which one-third of the employees last employed by Alaska Packers at Bristol Bay would be unemployed during 1940 because of the curtailment, the doubt must be resolved in favor of the Appellants, because the Act is remedial in nature and therefore must be liberaly construed so as to pay, and not to deny benefits, and therefore all Appellants so employed in 1939 should not be subject to any "labor dispute" disqualifiation.

Finally, Appellants' unemployment is "due" to the seasonal lay-off; that is, Appellants became unemployed when the 1939 season ended, and never became re-employed for 1940. Therefore, their unemployment is *due* to the *seasonal nature* of their work, and not to any alleged labor dispute.

4. *The findings of fact made by the Commission compel a decision contrary to the one rendered.*

The findings show that the Employers cancelled the 1939 contract, and that negotiations occurred between the parties, but that the parties did not arrive at a 1940 agreement. Therefore, it appears that had not the Employers cancelled the 1939 contract, operations would have taken place during 1940 on the basis of the 1939 contract which would have continued in existence. Therefore, the onus falls on the Employers because it was their affirmative action which started the "dispute" and Appellants are unemployed not through their own fault but because of the Employers' actions in attempting to undercut 1939 wages and conditions.

Nor do the findings of fact establish any labor dispute. They only show negotiations which were not consummated by agreement. They show no strike, no walk-out, no picket line, no presently existing employer-employee relationship terminated, in fact, no job to strike. It follows that the findings made, and the absence of other findings necessary to show a labor dispute, compel a decision that there was no labor dispute.

5. *The decision is contrary to law.*

A. The decision is wrong in holding that the facts in this case constitute a "labor dispute" within the meaning of the Act.

B. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act when the season opened, and that the dispute "continued".

C. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act after April 10, 1940 at Karluk, April 12, 1940 at Chignik, and after May 3, 1940 at Bristol Bay.

D. The decision is wrong in holding that Appellants' unemployment is "due" to a labor dispute.

The Commission has decided that where an employer cancels a collective bargaining agreement with a union and in its stead seeks to establish a contract giving lower wages and poorer conditions to the workers and the workers refuse to accept the same, as a result of which the employers abandon operations in a seasonal industry, work for the new season never having started, that this constitutes a "labor dispute in active progress" for the entire season of said seasonal industry within the meaning of the Act, and disqualifies the workers for benefits for a period of eight weeks as provided by the Act.

In Appellants' opinion, this is a plain misinterpretation of the Act, is contrary to the better reasoned

decisions on the subject of what constitutes a "labor dispute in active progress" within the meaning of the unemployment insurance laws, and violates the spirit and purpose of the Act. The facts in this case do not constitute a "labor dispute" within the meaning of the Act as a matter of law.

If the Commission's decision is allowed to stand it is an invitation to employers to cut wages (even though no basis exists or is offered) and if workers refuse to accept the cuts, then they also shall be denied unemployment benefits. The Act would thus operate to hurt rather than help workers as is its declared purpose.

XIII.

The opinion of the District Court of April 30, 1942, is contrary to law in that the statements, findings and conclusions therein stated are not supported by the evidence and is based upon an erroneous interpretation of the Alaska Unemployment Compensation Law and particularly upon an erroneous conception of what constitutes a "labor dispute" and what constitutes a labor dispute in "active progress" within the meaning of said law; that the errors in said opinion are substantially the same as those contained in the decision of the Commission and the specific assignments of error with respect to the Commission's findings and decision set forth in assignment of error No. XII are equally applicable to, and are adopted in full in the instant assignment of error.

SUMMARY OF ARGUMENT.

I.

The conclusions of law and decision of the District Court and the Commission are contrary to law, and to the evidence.

II.

The findings of fact of the District Court and of the Commission are not supported by the evidence, are contrary to the evidence, and both tribunals failed to make findings of fact required by the evidence.

ARGUMENT.

I.

THE CONCLUSIONS OF LAW AND DECISION OF THE DISTRICT COURT AND THE COMMISSION ARE CONTRARY TO LAW, AND TO THE EVIDENCE.

Assignments of error Nos. X, XI, XII, and XIII are covered by this point, and we refer to and adopt as argument in support of those assignments the reasons given with those assignments, as well as what we shall now say.

A. The Act, being remedial in nature, is to be liberally construed and with a view toward awarding rather than denying benefits.

This is true of all unemployment compensation acts. The rule is stated in

> *Danzer v. State Unem. Comm. of Oregon* (Circ. Ct. Oregon, County of Multnomah), C.C.H. Oregon #8031:

"The general purposes of the statute should be kept in view in construing its provisions. This is distinctly a remedial statute. It is an old rule, and one of universal acceptance, that a remedial statute should be liberally construed so as to suppress the mischief and advance the remedy. * * * Exceptions or exemptions to such a remedial statute should be strictly construed. * * * Where * * * workmen suffered enforced unemployment, they should be entitled to benefits unless they clearly fall within an excepted class. * * * If the real cause of the closure be in doubt, that doubt, under the liberal rule in relation to remedial statutes, ought to be resolved in favor of the workmen for whose relief the statute was enacted."

B. Before a claimant can be disqualified under Section 5(d) all of the following factors must be present:

It must appear with respect to *any week* for which it is contended a claimant is disqualified that during *such week*

1. There was a *"labor dispute"* in
2. *"Active progress"* at
3. The establishment or other premises at which claimant was *"last employed"*, and
4. That claimant's unemployment is *"due"* to such dispute.

If *any one* of these *four elements* is lacking for *any week* during which a climant is unemployed and claims benefits, he must be awarded benefits for that week. If there is *any doubt* on *any one* of these points, it *must be resolved in favor of* claimant.

C. There was no "labor dispute" within the meaning of Section 5(d).

Certainly there was a "dispute" between the Union and Employers over the terms of the 1940 contract, but it was not a "labor dispute" within the meaning of the Act. The term "labor dispute" means different things according to different acts in which it is used. In the Wagner Act and the Norris-LaGuardia Act it means what those acts define it to mean, and we agree with those definitions. But both of those acts, as this one, were enacted for the benefit of workers. The Wagner Act was passed to protect the right of collective bargaining and self-determination in the matter of employee representatives. The Norris-LaGuardia Act was passed to limit the issuance of injunctions against workers. Obviously a broad definition of "labor dispute" is appropriate in those acts.

The unemployment compensation acts were passed to allow benefits to workers who are unemployed because *there is no suitable employment available to them.* The "labor dispute" disqualification was inserted in the Act so that unemployment funds would not support a *strike or work stoppage* declared by workers. In other words, the State wanted to remain "impartial" during strike and stoppages. The eight weeks disqualification was imposed because statistics showed the average strike to last about that long. (See Referee's Decision, R. p. 638.) Generally, there is no "labor dispute" within the meaning of the unemployment compensation acts unless there is a strike or stoppage, or leaving of employment, or a presently

existing employer-employee relationship which is terminated as the result of some difference between the parties over wages, hours, conditions of work, representation, etc.

In our case, of course, there was no presently existing employer-employee relationship at the commencement of the 1940 season. That relationship was terminated by the closing of the 1939 season. All that occurred after the close of the 1939 season were negotiations between the Union and the Employers which did not culminate in a contract for 1940, and the Employers abandoned the 1940 season. These facts do not constitute a "labor dispute" under an employment compensation act.

Several decisions of unemployment commissions and courts in various states may be helpful on this point:

> *Pennsylvania Unemployment Commission Appeal,* No. B-44-S-RA-372 (8-29-40), C.C.H. Pa. #8057.04.
>
> Claimant was engaged at flat wage to prepare new vein of coal for contract work, during which time union and employer negotiated for contract rate on new vein. Agreement reached and claimant notified by union to stop work which he did. Claimant asked for other work which employer failed to furnish and claimant left work. Held: Claimant not disqualified account labor dispute. *Negotiations were amicable and no overt act was committed by either party. The bargaining did not constitute a labor dispute.* Claimant's unemployment is due to completion of contract job. (Our italics.)

So in our case, *the negotiations were not a labor dispute,* but were merely an attempt to get a contract for work which never started. Neither the negotiations, nor the failure to reach a contract, nor the ensuing abandonment of the 1940 season caused a labor dispute to occur where there was none. There was no overt act committed here. There was no strike. There was no job to strike. There was no stoppage and no leaving of employment. The Appellants just did not get employment for 1940. However the matter is viewed, there just was not a labor dispute within the meaning of the Act.

> *Graham v. State Unemployment Comm. of Oregon* (Circ. Ct. Oregon, 4th Jud. Dist.), Sept. 2, 1940, C.C.H. Oregon #8030.
>
> Claimants were members of C.I.O. who refused to join A.F.L. At insistence of A.F.L. employer discharged claimants when they refused to join A.F.L. Held: Not labor dispute within meaning of Unemployment Compensation Act.

If it be held that unemployment on account of a jurisdictional dispute as in the *Graham* case does not allow a labor dispute disqualification, that is persuasive authority to reject the disqualification in our case. Obviously, the Oregon Court allowed benefits because the men insisted on their right to belong to a union of their own choosing rather than switch unions and remain working. It is equally clear that the men could have remained at work if they had changed unions. The Court found that the Act could not be used to compel a man to belong to a union he did not want to join.

So in our case, the Act cannot be used to force men to work on Employer's conditions. If Appellants had accepted what was offered them, they could probably have worked. They refused to accept less than they enjoyed in 1939. It does not seem to us that a remedial statute can any more be used to depress wages and conditions, than it can be used to compel men to join a union not of their own choosing.

> *United States Coal Co. v. Unemployment Comp. Board of Review* (Ohio Court of Appeals), Dec. 23, 1940, C.C.H. Ohio #8111.
>
> Contract between company and union terminated by its terms, March 31, 1939 and work in mines ceased that day. Negotiations continued until contract reached May 12, 1939. Held: Benefits allowed between March 21-May 12, 1939. "Here there was no combined effort to stop work at a preconceived time. There was simply a conference attempting to work out an agreement between the interested parties. *The only contract between them had ended. No duty rested upon either the operators or the miners. The operators were under no obligation to keep the mines open. The miners were under no obligation to work. There was no contractual obligations.*" (Our italics.)

While it is true that the disqualification under the Ohio statute exists only where there is a "strike", the language used in the above decision is persuasive in our case. As in the miners' case, so in ours, there was no contract and no duty resolved on either party. There were just meetings to try to reach a contract. But in the absence of a duty on the part of Appellants to work, and since they declared no strike, left no

employment, and committed no overt act, we submit there was no labor dispute as contemplated by the Act.

Insofar as the District Court and Commission decided there was a "labor dispute" under the facts of our case, the decision is wrong in law.

(And insofar as the Referee found a "labor dispute" he, too, was wrong. Appellees claim and the Court and Commission found that Appellants are precluded from challenging any part of the Referee's decision since we did not appeal therefrom. We do not know any authority for such a finding. Since the Employers took an appeal, the entire case was opened before the Commission. To hold that an appeal on the Employers' part enables only them to challenge the Referee's findings, being one-sided, is palpably wrong and unjust. The whole case was opened when the appeal to the Commission was taken, and the whole case was open in the District Court and here.)

D. There was no labor dispute in "active progress" in this case.

Assuming for the sake of argument (but not admitting) that there was a "labor dispute", *we submit that it was not in "active progress" after April 10, 1940, at Karluk; after April 12, 1940, at Chignik; and after May 3, 1940, at Bristol Bay.* The dispute (if there was one) terminated on these dates with respect to each of those areas. The Referee's finding on this score is particularly eloquent and sound and we adopt his findings and argument (Referee's Decision, R. pp. 638-643):

"The crucial question is: Did the labor dispute continue after these dates and, if so, when did it terminate, if it became terminated at all?

A dispute, or other transaction, it would seem, continues in active progress when one or the other or both disputants, or parties to it, are active concerning it, not passive, when action is taken in relation to it and not when it is permitted to become dormant, for whatever may be the reason. In this case, nothing was done with the matters in dispute after the expiration of the respective dates mentioned, in fact there is a plain implication in announcing these dates that after their expiration no further efforts would be made to bring about an agreement and that the incident would be considered at an end, closed, and disposed of. And so it was treated by both parties. No action was taken by either of them to resume negotiations, no strike was called by the Union nor did the Employers declare a lockout. Both parties ceased from doing anything concerning the situation.

If, as claimed by counsel for the Employers, the dispute continued at least as long as the 1940 season, we may ask: When did it end? Why limit it to the 1940 season? If the Employers were to decide in 1941 not to operate because no agreement was reached in 1940, would not the dispute then be held to be in active progress during that season also and the men remain unemployed on that account and, under the argument of the Employers would continue to remain unemployed until the Employers decided to commence operations again. Like Banquo's ghost, or John Brown's soul, the dispute would walk or march until the Employers saw fit to lay it low.

The Employers called off the 1940 operations and thereby put an end to the negotiations and the dispute which had raged between them and the Union. The operations having been abandoned, what was there to dispute about? The matter had become a closed incident—'a dead Horse' as the man in the street would say.

In the brief of counsel, numerous references are given to definitions of what constitutes a labor dispute, but none is found dealing with the precise point under consideration and it is fair to say there is none.

Cases are found in the books where miners, in the Appalachian Fields, had contracts with their employers similar in some respect to those entered into between the Union and the Employers in this case and it has been held in Tennessee, which has disqualifying provisions like the one found in our act and now under consideration, that coal miners, during a cessation of activities, were deemed unemployed because of a labor dispute in active progress when the employer and the Union could arrive at no agreement within a period set aside for negotiations and the mines were shut down and remained shut down up to the time of the hearing and they were held disqualified for benefits on account thereof.

These cases are readily distinguishable from the case at bar. In the Miners' case the operations were not seasonal and the dispute was carried on and continued until the re-opening of the mines. In our case there was no possibility of a re-opening; the time to get ready to catch the fish which the Union was expected to put up had passed and the particular operation had on account thereof become impossible. There was here

no time for reconsideration; the die was cast and the Rubicon crossed; there was no possibility of turning back the clock. Preparations for the 1940 operations, if to be carried on at all, were unalterably set to begin at a definite time fixed by the Employers. After that time, they became impossible of performance. The time having expired without reaching an agreement, the operations were called off, the negotiations terminated and the active progress of the labor dispute which had raged for a couple of months came to an end.

It is my opinion that the labor dispute ceased to be in active progress with reference to the Karluk situation on April 10th—five days after the opening of the annual season there; it ceased to be in active progress at the Chignik plant on April 12th—twelve days after the opening of the season there and it ceased to be in progress with reference to operations in Bristol Bay May 3rd —two days before the opening of the season there, as fixed by Benefit Regulation 10 promulgated by the Alaska Unemployment Compensation Commission and that claimants became unemployed after those dates, not account of the existence of a labor dispute in active progress but because there was no employment to be had at these places and that a disqualification on account of the existence of a labor dispute in active progress, after the respective dates mentioned, is not justified under the facts as found and the law as I believe it to be. * * *

For the reasons hereinbefore stated, the Referee determines: * * *

Third: That at the time of the commencement of the season in Bristol Bay no labor dis-

pute was in active progress at any of the plants operated in that District in 1939.

It follows that: * * *

Fourth: That the claims filed by any of the 1939 Karluk and Chignik employees after the respective dates mentioned should be allowed; all of said claims to be subject to the statutory waiting period and other provisions of the Alaska Unemployment Compensation Law concerning eligibility to unemployment compensation of all or any of the claimants."

There are other unemployment cases which are persuasive authority leading to the conclusion that if there was a labor dispute in our case, it was not in "active progress". Some of these cases may be summarized as follows:

Graham v. Oregon, supra.

If there was labor dispute (which could hold there was not within meaning of Act), it was *not active* after employer acquiesced and laid off workers who refused to leave CIO and join AFL.

Indiana Unemployment Commission, Appeal Tribunal, No. 39-LD-51 (11-21-39) C.C.H. Ind. #8076.34.

Employees changed affiliation from X to Y union shortly before X union's contract with employer expired. Employer signed contract with Y union. X picketed and Y members prevented from working. Employer refused to negotiate with X because he had contract with Y. Held: Benefits allowed. "Where there is an impossibility of performance between the employer and

the X Union, the Appeal tribunal will not hold that there is a dispute in active progress. *The fundamental principal of a dispute presupposes a settlement,* but where the settlement is impossible, the Appeal tribunal will not permit such impossibility to bar benefits to unemployed individuals." (Our italics.)

So in our case, there was no way in which the Union could settle the dispute after the Employers abandoned the season. Since settlement was rendered impossible by the Employers' abandonment of the season, claimants became eligible for benefits at the time the impossibility arose.

Minnesota Appeal Tribunal Dec. Nos. 1190, 1287, etc. (5-21-40) C.C.H. Minn. #1980.06.

Employer operating in receivership, authorized by Federal Court to sell assets, which it did while strike was in progress at its premises. Employer thereupon ceased doing business in Minn.

Held: Benefits allowed. Dispute ceased date of court's order allowing sale of assets.

West Virginia Appeal Tribunal, Dec. No. AT-652 (8-30-39). Affirmed by Board of Review Dec. No. 155, C.C.H. West Va. #1980.03.

Claimants' disqualification account labor dispute held to terminate on reaching agreement, although plant did not reopen for 10 days thereafter in order to repair equipment.

So in our case, the ending of negotiations and the dropping of the matter by both parties, ended the

dispute (if there was one), and any disqualification which existed prior to that time was thereupon at an end.

The decision of the District Court and the Commission is wrong in law insofar as it found the dispute in active progress after April 10, 1940, at Karluk; after April 12, 1940, at Chignik; and after May 3, 1940, at Bristol Bay, and in reversing the Referee's decision in his findings and decision on this point.

E. There was no labor dispute in active progress at the "factory, establishment, or other premises" where appellants were last employed.

The last times Appellants worked at any of the Employers' plants was in 1939. When the 1939 season ended, Appellants ceased to be employees of Employers. Work never started at any of the Employers' Alaska plants during 1940. It follows that there was no labor dispute at the place of last employment.

F. Appellants' unemployment was not "due" to a labor dispute in active progress within the meaning of the Act.

Appellants' unemployment was "due" to the seasonal nature of the industry and to the fact that their employment ended at the close of the 1939 season.

Appellants never became re-employed for 1940. There was no guarantee that Appellants or any one of them would have had employment had a 1940 agreement been consummated.

It is admitted that Alaska Salmon Company called off its Bristol Bay season, and had other reasons

than a failure to reach an agreement with the union for so doing. (See Mr. Oliver's stipulations, R. p. 589, to the effect that Alaska Salmon would not operate during 1940 under any conditions, even if agreement was reached, after sending letter to Union under date of April 30, 1940, that this company had abandoned its 1940 operation.) *It follows unquestionably that all workers employed in Alaska by Alaska Salmon in 1939 are entitled to benefits.* Any doubt as to the reason for unemployment must be resolved in favor of Appellants, and if other reasons than a labor dispute contributed to the unemployment, benefits must be paid. Therefore these Appellants must be paid.

Danzer v. Oregon, supra.

There was evidence that Alaska Packers would have employed one-third fewer men for 1940 on account of the curtailment. Inasmuch as it cannot be determined which one-third of the Alaska Packers' 1939 Bristol Bay employees would not be employed during 1940, had there been an operation in that area, the doubt must be resolved in favor of all who were employed there in 1939, thereby qualifying all of them for benefits under the rule of the *Danzer case.*

Some of the decided cases by various unemployment commissions that employment must be *"due"* to a labor dispute before disqualification attaches are as follows:

Danzer v. Oregon, supra.

Where there was evidence that closing of plants was due as well to belief by operators that de-

creased production was necessary to improve the market as to labor dispute, doubt resolved in favor of claimants and labor dispute disqualification disallowed.

Indiana Appeal Tribunal, No. 39-LD-6, 7, 9, 10, 11 C.C.H. Ind. #8066.06.

Worker laid off for lack of work prior to labor dispute. Held: Unemployment not due to labor dispute, even though worker is member of union and participated in dispute.

Same situation and ruling as in above case in following:

Indiana Appeal Tribunal No. 39-LD-61 C.C.H. Ind. #8076.40;

Indiana Appeal Tribunal No. 40-A-198 and other cases. C.C.H. Ind. #8088.15;

Iowa Appeal Tribunal Dec. No. 39A-614-CM C.C.H. Iowa #8050.06;

Kansas Unemployment Comp. Comm. Dec. No. 28 C.C.H. Kansas #8058.10;

North Dakota Unemp. Comp. Comm. App. No. 10 C.C.H. No. Dak. #8042.20;

Oklahoma Comp. Comm. Board of Review Dec. No. 51-AT-40, C.C.H. Okla. #1980.01;

Michigan Unemployment Comm. Ref. Dec. No. 2927, C.C.H. Mich. #8067.12;

Michigan Unemployment Comm. Ref. Dec. No. 3069, C.C.H. Mich. #8067.12;

Minnesota Appeal Tribunal Dec. 845, C.C.H. Minn. #1980.08;

Massachusetts Unemp. Comp. Comm. Dec. No. 1358 Mass. A. C.C.H. Mass. #9108.02.

The following case is in point in our situation:

Michigan Unemp. Comp. Comm. Ref. Dec. No. 1589, C.C.H. Mich. #8049.06:

> Employer operates cooperative mine. All employees laid off at end of season. Immediately after seasonal lay-off employer became involved in labor dispute. Held: *Unemployment is due to seasonal lay-off, and not labor dispute regarding renewal of union contract which was to govern future.* (Our italics.)

Thus it will be noted that the unemployment commissions of the various states uniformly follow the rule that where there is a lay-off for lack of work or a season ending, even though the employer thereafter becomes involved in a labor dispute which prevents work resuming, *the unemployment is found to be due to the lay-off or season ending, and not the labor dispute, and benefits are paid accordingly.*

We conclude that the District Court and the Commission made an error in law in deciding that the unemployment of claimants was due to a labor dispute, rather than the seasonal lay-off. So also was the Referee in error in this point.

G. The conclusions of law and decision are not supported by the findings of fact.

See Assignment of Errors, No. XII, 2.

H. The conclusions of law and decision are not supported by the evidence.

See Assignment of Errors, No. XII, 3.

I. The findings of fact made by the Commission compel a decision contrary to the one rendered.

See Assignment of Errors, No. XII, 4.

J. The decision is contrary to law.

See Assignment of Errors, No. XII, 5.

II.

THE FINDINGS OF FACT OF THE DISTRICT COURT AND OF THE COMMISSION ARE NOT SUPPORTED BY THE EVIDENCE, ARE CONTRARY TO THE EVIDENCE, AND BOTH TRIBUNALS FAILED TO MAKE FINDINGS OF FACT REQUIRED BY THE EVIDENCE.

Section 6(i) of the Act provides: "The findings of the Commission as to the facts, *if supported by the evidence,* * * * shall be conclusive * * *."

Thus it is clear that if the findings are *not* supported by the evidence, those findings shall be set aside and the District Court make its own findings. It also follows that if the Commission *fails* to make findings required by the evidence and necessary to a proper determination of the case, the District Court may make such findings as the evidence requires.

A. Appellants contend that certain findings of fact made by the District Court and Commission are not supported by the evidence.

Our contentions and argument on this point are set out in our Assignments of Error Nos. I, IX, XII-1 and therefore will not be repeated here.

B. The evidence and a proper consideration of the case requires findings of fact on matters which the District Court and Commission ignored.

See the Assignments of Error No. VII.

CONCLUSION.

For the reasons stated and authorities cited in this Brief, Appellants respectfully submit that the decision of the District Court should be reversed and that Appellants should be paid full benefits for their unemployment during the 1940 Alaska salmon season, and that at the very least the Referee's decision should be restored and given effect.

Dated, San Francisco,
February 4, 1944.

Respectfully submitted,
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